
(2000) 11 OHC CK 0036

In the Orissa High Court

Case No : Original Jurisdiction Case No. 12380 of 1998

Budhimanta Biswal and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Citation : (2000) 2 OLR 705

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : B.N. Rath, B. Senapati, J. Rath, S.K. Jethy, P.K. Panda, S.B. Mohanty, P.S. Samantra and M.K. Panda, for the Appellant; P.V. Ramdas and P.V.B. Rao, for the Respondent

Judgement

L. Mohapatra, J.—The petitioners have filed this writ application challenging the action of opposite parties 2 to 5 in declining to give appointment to petitioner No. 2 (son of petitioner No. 1) on compassionate ground.

2. The case of the petitioners is that petitioner No. 1 was working as a Daftary in the State Bank of India at Kamakshyanagar Branch and had put in more than 36 years of service. While he was continuing as such, his vision in both his eyes deteriorated and on 1.6.1994 the petitioner No. 1 was examined by the Professor and Head of the Department of Ophthalmology of S.C.B. Medical College and Hospital, Cuttack. It was found that the petitioner No. 1 was suffering from Temporal Optic Atrophy with Senile Mucular Degeneration of both the eyes and the Professor on examining the petitioner was of the opinion that there is no possibility of improvement even by use of glasses and suggested that the petitioner should be treated as invalid for further continuance in service. Petitioner No.1 thereafter requested opposite party No. 4 through opposite party No. 5 to permit him to retire from service on health ground and on consideration of the request, a requisition was sent to the Special Medical Board to convene a proceeding for medical examination of petitioner No. 1. Accordingly on the requisition of the Chief General Manager -opposite party No. 4, a Special Medical

Board was constituted and on 2.9.1994 petitioner No. 1 was examined by the Board consisting of senior doctors. The said Board also agreed with the findings of the Professor who had already examined petitioner No. 1 earlier and advised petitioner No. 1 to avoid strenuous work and take rest. The Board declared petitioner No. 1 completely invalid for performing his job any further. On the basis of the report of the Special Medical Board the petitioner was declared medically invalid with effect from 2.9.1994 and was allowed to retire. On 27.10.1994 the petitioner made a representation to the Chief General Manager-opposite party No. 3 requesting for appointment of his eldest son Balaram Biswal on compassionate ground. It is stated by the learned counsel for petitioners that earlier the claim of compassionate appointment was confined only to the dependents of deceased employee, but subsequently the scheme was modified in 1982 extending the facility to sons, daughters and near relatives of the employees who retire prematurely on account of incapacitation on medical ground. In spite of such a scheme the request of the petitioner for appointment of his eldest son on compassionate ground was kept pending and only on 15.1.1997 the petitioner was intimated that the request for appointment of his eldest son has been recommended to the Central Office for approval. Though this intimation was given in January, 1997, till November, 1997 no further intimation was received by the petitioner for which he made a grievance on 27.11.1997 before the opposite parties. On 3.12.1997 opposite party No. 5 intimated petitioner No. 1 that his eldest son is not coming within the prescribed age limit and as such, he is not eligible for appointment on compassionate ground. However, the petitioner was advised to request for another family member who is within the prescribed age limit for such appointment and was directed to file the application by 6th December, 1997. On receipt of the said letter petitioner No. 1 immediately made another application within the time stipulated in the said letter for appointment of his younger son - petitioner No. 2 on compassionate ground. But no steps were taken by the opposite parties for such appointment. In July, 1998 the petitioner was intimated that the request for appointment of petitioner No. 2 on compassionate ground has been declined by the competent authority. Challenging the said order, this writ application has been filed.

3. A counter has been filed by opposite parties 2 to 5 wherein it is stated that the circular governing the field provides that object of granting compassionate appointment arises only when the Bank is satisfied that the financial condition of the family of the employee is such that but for the provision of employment the family will not be able to meet the crisis. Determination of the financial condition of the family is thus an important criterion for deciding or considering a proposal for compassionate appointment. It is further stated in the counter that on examination of the state of affairs of petitioner No. 1 it came to light that petitioner No. 1 is not in financial crisis for an appointment of his son on compassionate ground and he has adequate means of livelihood and therefore, the request for compassionate appointment has been rightly turned down.

4. Annexure-5 is circular No. 148 of 1982 dealing with compassionate

appointment which states that a decision had been taken to consider the sons/daughters/near relatives of employees who are to give up Bank's job on medical grounds on retirement and the benefit of compassionate appointment may be extended to the dependents of officials/employees who are incapacitated by accident or serious ailments like paralysis, cancer, blindness, etc. It is further found from the annexures that the request of petitioner No. 1 for appointment of his eldest son Balaram Biswal was not rejected on the ground that the petitioners had sufficient means of livelihood. As a matter of fact from Annexure-6 it appears that such proposal was recommended to the central office for approval, but the same was turned down only on the ground that the eldest son of petitioner No. 1 does not come within the prescribed age limit. From Annexure-8 it appears that while rejecting the prayer of compassionate appointment of the eldest son of petitioner No. 1 he was directed to arrange and submit application in respect of another family member who is within the prescribed age limit and eligible for appointment. Pursuant to the said direction only petitioner No. 1 had submitted the application for appointment of petitioner No. 2. Therefore, the counter filed by opposite parties stating that the scheme does not apply to employees who are otherwise financially sound cannot be accepted. At least so far as this case is concerned at one point of time opposite parties had considered the case of petitioner No. 1 and had recommended for appointment of his eldest son to the central office for approval. Moreover, since the bank failed to give appointment to the eldest son of petitioner No. 1 on the ground of over age and he was permitted to submit another application for another member of his family eligible for such appointment, at this stage the ground taken in the counter that family of petitioner No. 1 has sufficient means of livelihood and cannot claim appointment on compassionate ground, cannot be accepted. I, therefore, dispose of this writ application directing opposite parties 2 to 5 to reconsider the case of petitioner No. 2 for appointment on compassionate ground. Since the application had been made when petitioner No. 2 was within the prescribed age limit, over age, if any, shall not stand as a bar for consideration. Opposite parties are further directed to consider the case of petitioner No. 2 and take a final decision within three months from the date of communication of this order. Requisites for communication shall be filed within three days.